

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEIF SKOOGFORS,

Plaintiff,

- against -

LYCOS, INC. and JOHN DOES 1-10,

Defendants.

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ORDER

16 Civ. 2742 (PGG) (JCF)

PAUL G. GARDEPHE, U.S.D.J.:

Plaintiff Lief Skoogfors – a photographer – filed this copyright infringement action on April 12, 2016. (See Cmplt. (Dkt. No. 1) ¶¶ 1-2) Plaintiff alleges that Defendant Lycos published five of his copyrighted photographs without his permission on websites hosted by Defendant, and seeks statutory damages and attorneys’ fees related to Defendant’s copyright infringement. (Id. ¶¶ 12-32, 46)

On November 17, 2016, this Court entered a default judgment against Defendant, (see Order of Default (Dkt. No. 20)), and referred this case to Magistrate Judge James Francis for an inquest on damages. (See id. at 1; Order of Reference (Dkt. No. 21)) Pending before this Court is Magistrate Judge Francis’s Report and Recommendation regarding the appropriate amount of damages. (See R&R (Dkt. No. 28))

BACKGROUND

The Clerk of the Court issued a Certificate of Default as to Defendant Lycos on November 03, 2016. (Cert. of Default (Dkt. No. 16)) This court ordered Defendants to show cause on November 17, 2016, why a default judgment should not be entered against them. (Order (Dkt. No. 17) at 1) Defendant Lycos did not file an opposition to Plaintiff’s motion for a

default judgment, and did not appear on that date. (See Order of Default (Dkt. No. 20) at 1) Accordingly, this Court entered a default judgment against Defendant, (See id.), and referred this case to Magistrate Judge Francis for an inquest on damages. (Order of Reference (Dkt. No. 21))

On November 28, 2016, Judge Francis directed Plaintiff to submit “proposed findings of fact and conclusions of law setting forth in detail the amount of damages claimed,” and addressing the “legal basis for the claim for damages as well as the basis for personal jurisdiction over the defaulting defendants.” (Order (Dkt. No. 22)) Plaintiff made a detailed submission in support of his request for damages. (See Dkt. Nos. 23-24) On December 29, 2016, Judge Francis scheduled an inquest on Plaintiff’s claim for damages for January 19, 2017. (Order (Dkt. No. 25))

On April 21, 2017, Judge Francis issued a thorough Report and Recommendation (“R & R”), recommending that this Court award Plaintiff: (1) \$50,000 in statutory damages, (2) \$17,071.50 in attorneys’ fees, and (3) \$553 in costs, for a total of \$62,624.50 in damages. (R & R (Dkt. No. 28) at 16) Copies of the R&R were sent to the parties on April 21, 2017. (Id. at 17)

Judge Francis’ R &R makes clear that “[f]ailure to file timely objections will preclude appellate review.” (Id.) Neither side filed objections to the R&R.

STANDARD OF REVIEW

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When no objections are filed to a magistrate judge’s report and recommendation, “a district court need only satisfy itself that there is no ‘clear error on the face of the record’ in order to accept the recommendation.” Austin v. Lynch, No. 10

Civ. 7534 (JPO) (GWG), 2011 WL 6399622, at *1 (S.D.N.Y. Dec. 20, 2011) (citing Fed. R. Civ. P. 72(b) advisory committee note). Moreover, the Second Circuit has made clear that a “party generally waives judicial review of an issue when he or she fails to make timely objection to a magistrate judge’s report, as long as all parties receive clear notice of the consequences of their failure to object.” DeLeon v. Strack, 234 F.3d 84, 86 (2d Cir. 2000) (citing Small v. Sec’y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989)); see also McCarthy v. Manson, 714 F.2d 234, 237 (2d Cir. 1983) (“When a party fails to object timely to a magistrate’s recommended decision, it waives any right to further judicial review of that decision.”).

DISCUSSION

Here, the R&R recites the requirement that “pursuant to 28 U.S.C. § 636(b)(1) and Rules 72, 6(a), and 6(d) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from [April 21, 2017] to file written objections to this Report and Recommendation.” (R & R (Dkt. No. 28) at 16) The R & R further states that “[f]ailure to file timely objections will preclude appellate review.” (Id. at 17) Despite clear warning that a failure to file objections would result in a waiver of judicial review, neither side filed objections to Judge Francis’s R & R.

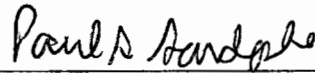
Because neither side filed objections to Judge Francis’s R & R, the parties have waived judicial review. The Court has, however, reviewed Judge Francis’s seventeen-page R & R and finds it to be thorough, well-reasoned, and free of any clear error. Accordingly, Judge Francis’s R & R will be adopted in its entirety.

CONCLUSION

For the reasons stated above, the R & R is adopted in its entirety and Plaintiff is awarded (1) \$50,000 in statutory damages, (2) \$17,071.50 in attorneys' fees, and (3) \$553 in costs, for a total of \$62,624.50 in damages. (See R & R (Dkt. No. 28) at 16) The Clerk of Court is directed to enter judgment, and to close this case.

Dated: New York, New York
October 2, 2018

SO ORDERED.



Paul G. Gardephe
United States District Judge